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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 ALLAN PARMELEE,

8 Plaintiff,

9 v.

10 STEVE SUNDBERG, *et al.*,

11 Defendants.

Case No. C07-5567 FDB

ORDER ADOPTING REPORT
AND RECOMMENDATION
DISMISSING COMPLAINT
WITHOUT PREJUDICE

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13 This matter comes before the Court on the Magistrate Judge's recommendation that
14 Plaintiff's motion to voluntarily dismiss his prisoner civil rights action pursuant to Rule 41(a)(1) be
15 granted. As detailed by the Magistrate Judge, on March 14, 2008 Plaintiff filed a motion to extend
16 the time for service on Defendants and to discovery deadlines or in the alternative to voluntarily
17 dismiss his complaint without prejudice. On April 15, 2008 the Court granted Plaintiff additional
18 time to serve the Defendants and extended the discovery deadline. Unsatisfied with the modification
19 of scheduling order, Plaintiff renewed his motion additional time and for voluntary dismissal without
20 prejudice if no revision was granted. The motion for revision was denied. Plaintiff then sent a letter
21 to the Court requesting a ruling on his request for alternative relief of voluntary dismissal without
22 prejudice. Defendants do not object to a dismissal without prejudice.

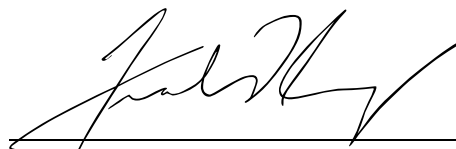
23 Plaintiff has filed an objection to the very request for relief that the Magistrate Judge
24 recommends be granted. Plaintiff argues that there was no pending motion before the Magistrate
25 Judge. The Court is not persuaded by Plaintiff's assertions. In a letter dated July 9, 2008, Plaintiff
26 urged the Court to rule on his alternative motion to dismiss his case pursuant to Rule 41. [Dkt. # 25].
27 Plaintiff requested a "decision on [his] month's old motion." *Id.* In response, Defendants stipulated
28 to the dismissal without prejudice. [Dkt. # 26]. The Magistrate Judge based her report and

1 recommendation on Plaintiff's renewed request for a ruling on his alternative motion for voluntary
2 dismissal without prejudice. [Dkt. # 28]. In a pro se civil rights case, the pleadings must be
3 construed liberally to afford the plaintiff the benefit of any doubt. See Lopez v. Smith, 203 F.3d
4 1122, 1130-31 (9th Cir. 2000). On three separate occasions Plaintiff requested that his complaint be
5 dismissed without prejudice if he did not obtain the sought after alternative relief. The Court will not
6 permit Plaintiff to manipulate the rules to permit the withdrawal of his requested relief after he has
7 renewed his request and the Magistrate Judge has filed her Report and Recommendation. Plaintiff's
8 objection to the very relief he requested is without merit.

9 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L.
10 Strombom, objection to the report and recommendation, and the remaining record, does hereby find
11 and ORDER:

- 12 (1) The Court adopts the Report and Recommendation;
- 13 (2) The complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(a)(1)
14 of the Federal Rules of Civil Procedure;
- 15 (3) All remaining motions are stricken as moot; and
- 16 (4) The Clerk is directed to send copies of this Order to Plaintiff, to counsel for
17 Defendants, and to the Hon. Karen L. Strombom.

18 DATED this 2nd day of September, 2008.

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FRANKLIN D. BURGESS
23 UNITED STATES DISTRICT JUDGE
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